

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-12-1-5-00024-17  
45-004-12-1-5-00192-18  
45-004-12-1-5-00193-18  
45-004-12-1-5-00194-18

**Petitioner:** Joseph E. Gogolak

**Respondent:** Lake County Assessor

**Parcels:** 45-05-33-232-024.000-004  
45-05-33-232-023.000-004  
45-05-33-232-022.000-004  
45-05-33-232-021.000-004

**Assessment Year:** 2012

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. On February 13, 2013, Petitioner filed Form 130 petitions with the Lake County Assessor for each parcel referenced in the caption. The Lake County Property Tax Assessment Board of Appeals did not issue a determination on any of those petitions. On February 14, 2017, Petitioner filed a Form 131 petition with the Board for one of the parcels—parcel no. 45-05-33-232-024.000-004. That parcel corresponds to Lot 37 in Lake Shore Addition. In the field asking for the parcel’s legal description, Petitioner referenced Lots 37 through 40.
2. We issued a Notice of Defect in Appeal Form, indicating, among other things, that Petitioner had failed to attach a copy of the Form 130 petition or other document he filed to initiate his appeal at the local level. In response to our defect notice, Petitioner attached copies of his Form 130 petitions for all four parcels (Lots 37-40). We set a hearing on his appeal of Lot 37 for September 21, 2017. Based on that hearing and on our review of Petitioner’s original Form 131 petition and his response to our defect notice, we determined that Petitioner intended to appeal all four parcels. We therefore issued an order allowing the Petitioner time to file Form 131 petitions for the other three parcels<sup>1</sup> and indicating that we would set a rehearing for Lot 37.<sup>2</sup>

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<sup>1</sup> Because the PTABOA did not issue a determination on Petitioner’s Form 130 petitions, he had the option of either waiting for the PTABOA to issue a determination or appealing to us. See I.C. § 6-1.1-15-1.2(k) and its predecessor I.C. § 6-1.1-15-1(o).

<sup>2</sup> This procedural history is laid out in more detail in our December 18, 2017 Order Notifying Petitioner of Time to File Petitions for Review of Assessment Before the Indiana Board of Tax Review.

3. Petitioner responded by filing Form 131 petitions for all four parcels. He elected to have the appeals heard under our small claims procedures. We set the rehearing on Lot 37 and the hearings on the other three parcels for April 23, 2018.
4. Ellen Yuhan, our designated administrative law judge (“ALJ”), held a single hearing on that date at which the parties addressed all four parcels. Neither she nor the Board inspected the property.
5. Petitioner and Robert W. Metz, a hearing officer for Lake County, were sworn and testified.

**Facts**

6. The parcels are four contiguous vacant lots in Gary. Each parcel was assessed at \$10,600. Petitioner requested a total assessment of \$7,000 for the four parcels.

**Record**

7. The official record contains the following:
  - a. Digital recordings of the September 21, 2017 and April 23, 2018 hearings
  - b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Loray T. Robinson,
Petitioner Exhibit 2:	<i>Gogolak v. Dep’t of Local Gov’t Fin.</i> , pet. 45-041-02-1-5-00227 (IBTR)
Petitioner Exhibit 3:	Plat map showing the four parcels, <sup>3</sup>
Respondent Exhibit 1:	Real Property Maintenance Report for 2011 pay 2012 (Lot 40),
Respondent Exhibit 2:	Real Property Maintenance Report for 2011 pay 2012 (Lot 39),
Respondent Exhibit 3:	Real Property Maintenance Report for 2011 pay 2012 (Lot 38),
Respondent Exhibit 4:	Real Property Maintenance Report for 2011 pay 2012 (Lot 37) <sup>4</sup>

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<sup>3</sup> Petitioner submitted these exhibits at the original hearing on September 21, 2017 and requested that the Board consider them in the rehearing.

<sup>4</sup> Respondent submitted one exhibit at the original hearing—the Real Property Maintenance Report for Lot 37 for 2012 pay 2013.

- c. All motions or other documents filed by the parties and all notices and orders issued by the Board or our ALJ.

### **Burden of Proof**

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates two exceptions to that rule, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. In those instances, the assessor has the burden of proving that the assessment is correct. Here, each parcel's assessment increased by more than 5% between 2011 and 2012. Respondent therefore agreed that he had the burden of proof.

### **Summary of Parties' Contentions**

9. Respondent's case:
  - a. The Petitioner offered an appraisal from Loray Robinson in which Robinson valued all four lots together at \$7,000. Respondent agreed to stipulate to that value for the year under appeal. According to Respondent's witness and representative, Robert Metz, Respondent cannot guarantee any values for later years because the township assessor has authority over those assessments. Also, while the property existed as four separate tax parcels in 2012, it has since been combined into one parcel. *Metz testimony and argument.*
  - b. Respondent disagreed with Petitioner's claim that we should apply a negative influence factor. In asking us to do so, Petitioner pointed to a determination we issued in 2002 involving another property of his. In that appeal, we found that a negative influence factor should be applied because the property was landlocked. The property at issue here is not landlocked—it has access to a platted street. Although the "paper street" has not been developed, it could be developed in the future. *Metz testimony; Pet'r Exs. 2-3.*
10. Petitioner's case:
  - a. While Petitioner thought the property was worth even less than \$7,000, he agreed to that amount. But he wanted something more than a determination simply changing the combined assessment for the parcels to \$7,000. Although Robinson accounted for the lack of street access in reaching his valuation opinion, Petitioner feared that local officials would increase his assessment in later years, forcing him to appeal his assessment every year. He therefore sought a permanent negative influence factor to reflect the lack of access. For support, he pointed to our determination ordering a 90% negative influence factor in the appeal of his other property. *Gogolak testimony and argument; Pet'r Exs. 1-3.*

## ANALYSIS

11. We find that the assessments should be reduced to a combined total of \$7,000. We reach this decision for the following reasons:
  - a. Respondent had the burden of proof. Rather than offer any evidence to prove the assessments were correct, he agreed to an order reducing the parcels' combined assessment to \$7,000—the amount reflected in Robinson's appraisal.
  - b. While Petitioner agreed to that amount, he wanted us to order Respondent to apply a permanent negative influence factor to freeze the assessment at \$7,000 unless and until the property becomes accessible. It is a well-settled concept in Indiana that each assessment year stands alone. *See Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) (“[F]inally, the court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”). So too does each appeal process. *Fisher v. Carroll Cnty. Ass'r*, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017). We therefore lack authority to order relief for future assessment years. Nonetheless, the parties agree that the property is currently inaccessible. As long as that remains true, local assessing officials would be well advised to account for the lack of accessibility when determining its assessment. Otherwise, they will invite unnecessary litigation.
  - c. We find that the assessments for the four parcels should be reduced to a combined total of \$7,000, as supported by Robinson's appraisal and agreed to by the parties.

## FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we determine that the 2012 assessments should be changed to a combined total of \$7,000 for the four parcels.

ISSUED: July 10, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.